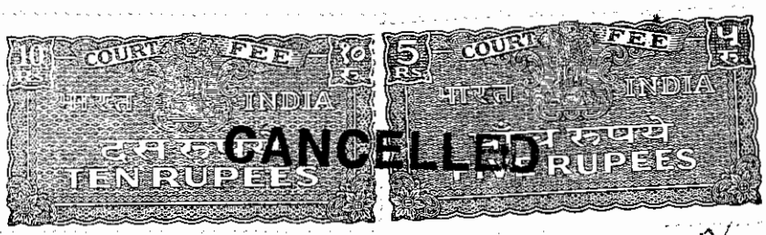

(3)

(1)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

C.R. No. 39 Of 2005.

APPLICANTS
PLAINTIFFS :- 1. Pavan Kumar, son of Madan Lal Jain, aged 52 years

2. Madan Lal Jain, son of Sagunchand, aged about 75 years,

3. Praveen Kumar, son of Madan Lal Jain, aged about 45 years,

All the three resident of Shivpara, Durg, District Durg (Chhattisgarh),

P.R. No. 747/05
Presented by Shri Ramesh Jain
dated 15-03-05

V E R S U S

NON-APPLICANTS
DEFENDENT :- 1. Bhagwan Shri Sita Ramji Mandir, Gandhi Chowk, Durg, Through Shri Kishan Khandelwal, son of Manakchand Khandelwal, aged about 62 years, resident of Khandelwal Colony, Durg, Tahsil and District Durg (Chhattisgarh),

2. Shri Kisan Khandelwal, son of Shri Manakchand Khandelwal, resident of Khandelwal Colony, Durg, Tahsil and District Durg (Chhattisgarh),

3. Shyam Sunder Khandelwal, son of Prabhu Dayal Khandelwal, aged about 56 years, resident of Gandhi Chowk, Durg, Tahsil and District Durg (Chhattisgarh).

Contd..2..

CIVIL REVISION UNDER SECTION 115 OF CODE OF CIVIL PROCEDURE

XI-HC-78

(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R. No. 39/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

29.06.2005

Shri H.B. Agrawal, Sr. Advocate with Ku. Sangeeta Mishra, counsel for the applicants.

Heard on admission.

This revision has been directed against the impugned order dated 3.3.2005 passed by First Civil Judge Class-II, Durg in civil suit No. 8-A/2004.

It appears that in a pending civil suit, the defendants set forth counter claim under Order 8 Rule 6-(A) of the C.P.C. After setting forth, this counter claim ~~case~~, the plaintiffs filed an application under Order 8 Rule 6 (C) of the C.P.C. for exclusion of the counter claim on the ground that nature of counter claim set forth was different than the original nature of the suit. This application for exclusion for the counter claim was dismissed by the trial Court vide impugned order dated 3.3.2005 against which the plaintiffs have filed this civil revision.

After the new amendment in Section 115 of the Code of Civil Procedure w.e.f. 1.7.2002, it has been provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

In view of the said amendment brought in C.P.C., in the opinion of this Court, this revision would not be maintainable as even if order is passed in favour of the applicants, in this revision, it shall not dispose of the

(40)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R.No.39/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

suit pending before the Court below. I am not inclined to admit the revision for hearing, the same is dismissed.

At this stage, learned counsel for the applicants submits that he may be given a liberty to file appropriate proceedings against the impugned order passed by the trial Court. He also prays for returning the certified copy of the impugned order. This liberty is granted to the applicant.

Applicants may avail the remedy available under the law.

Certified copy of the impugned order be returned to counsel for the applicants after retaining the photocopy of the same, if demanded within 3 weeks from today.

With the above observations, this revision stands finally disposed of. There shall be no order as to costs.

Sd/-
Sunil Kumar Sinha
Judge